DRN-4839830

The complaint

Mr I is unhappy that a car supplied to him under a hire purchase agreement with Secure Trust Bank Plc trading as V12 Vehicle Finance was mis sold to him and that it wasn't of a satisfactory quality.

What happened

In October 2023, Mr I was supplied with a used car through a hire purchase agreement with V12. He paid a £1,000 deposit and the agreement was for £29,000 over 60 months; with 59 monthly payments of £687.47 and a final payment of £697.47. At the time of supply, the car was around six and a half years old and had done around 73,700 miles.

Mr I started to have problems with the car – he says there was a dashboard warning light relating to the rear light cluster, a dashboard warning light relating to the diesel particulate filter (DPF), and that the brakes were juddering around 60 to 70 miles per hour. He's supplied a photo to show the warning light related to the lights, dated 11 October 2023, when the car had done 74,143 miles – around 450 miles since being supplied to Mr I. A further photo, dated 22 January 2024, shows the DPF warning light, and that the car had done 80,377 miles – around 6,700 miles since supply.

Mr I took the car to a local garage on 13 February 2024, and the job card shows an issue with the wheel alignment. At the time of this inspection the car had done 81,194 miles – around 7,500 miles since it was supplied to Mr I. Unhappy with this, and that the model of car he'd been supplied with didn't match that which had originally been advertised, Mr I complained to V12. And he asked to be able to reject the car.

In responding to Mr I's complaint, V12 didn't uphold it. They said that Mr I was fully aware that the model of the car wasn't the same as the one advertised, but he chose to go ahead with this car anyway. So, they didn't think there had been a mis-sale. With regards to the faults with the car, V12 explained that they have the right of repair. They said that the warranty would cover the issues with the brakes and warning lights, or they would be happy for the supplying dealership to undertake a repair instead.

Mr I wasn't happy with this response, so he brought the matter to the Financial Ombudsman Service for investigation. In doing so, he also said that the car had previously been in a front-end accident, as the trim panels were loose and there's a difference in the paint colour. He also supplied a video showing this.

Our investigator said Mr I had signed a declaration confirming the actual make and model of the car before it was supplied to him, so they didn't think there had been any mis-sale. The investigator also said that, while there was evidence to show faults with the car, given the mileage Mr I had travelled there was nothing to show the faults were present or developing at the point the car was supplied to Mr I. However, despite this, V12 had offered to repair the car, which the investigator thought was fair and reasonable in the circumstances.

Finally, the investigator said that it is not uncommon for older cars to have been involved in an accident and been repaired. But this is not something a previous owner is obliged to

declare to the dealership. So, they didn't think V12 had done anything wrong by not making Mr I aware of any potential previous accident, and that V12 didn't need to do anything more.

Mr I didn't agree with the investigator. He said that he spoke to V12 within the first 30-days of being supplied with the car, asking for rejection. The investigator explained that, while Mr I had asked V12 if he could reject the car, this wasn't until 7 December 2023 – more than 30-days after being supplied with the car. This request was made due to the car having been mis-sold to him, and it wasn't until 16 December 2023 that Mr I asked to reject the car due to the faults. Unhappy with this, Mr I asked for the case to be passed to an ombudsman for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr I was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, V12 are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must confirm to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless V12 can show otherwise. So, if I thought the car was faulty when Mr I took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask V12 to put this right.

Mis-sale

When considering if there's been a mis-sale, I'm looking for two things to be present. Firstly, there must be a false statement of fact. And, if there was, then I'm looking to see if that false statement of fact induced, in this instance, Mr I to chose to finance this particular car, instead of financing an alternative car.

It's not disputed that the car supplied to Mr I was advertised as a different model than it actually was. However, I've seen a copy of a handover Customer Certificate that Mr I signed on 11 October 2023. This clearly states:

> *"*Customer is expressly aware that the car being bought is [actual make and model] and not [advertised make and model] as per the advertisement on our website and*

[third party website] and any other marketing provider that we feed. Customer is happy that this representation overrules the representation in our adverts and this matter will be deemed as a full and final settlement on signature. The customer will not be entitled to reject the vehicle or any other claims that may arise in the future regarding this matter to advise the vehicle has been mis-sold to them. The customer invoice has been rectified accordingly by removing the model derivatives"

What's more, on signing the agreement with V12 on 10 October 2023, Mr I signed to confirm that he had read the agreement and accepted the terms. The agreement also clearly stated the actual make and model of the car, not the advertised make and model. As such, while the initial advert was clearly incorrect, Mr I was made expressly aware of this *before* the car was supplied to him, as well as what the actual make and model of the car was.

Given this, I'm satisfied that, in this instance, there was no false statement of fact provided that would mean that a mis-sale has taken place. So, I won't be asking V12 to allow Mr I to reject the car.

Satisfactory Quality

Mr I has provided evidence of the current faults with the car, and that these faults occurred within six-months of the car being supplied to Mr I. So, as I've said above, the CRA implies these faults were present when the car was supplied unless V12 can show otherwise – which they haven't.

The CRA allows for a short-term right to reject, within the first 30-days, if the goods supplied weren't of a satisfactory quality. While Mr I asked V12 if he could reject the car, he didn't do so until after the first 30-days. As such, short-term rejection wasn't an option available to him.

However, section 24(5) of the CRA gives a general right to reject but says *"a consumer who has … the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract."* This is known as the single chance of repair. And the CRA is also clear that, only if this single chance of repair fails will the consumer have the right to reject the car.

I've seen that, in their final complaint response letter, V12 have already offered to have the car repaired – either under the warranty or by the dealership themselves. This offer is not only in line with the CRA, but I also think it's fair and reasonable in the circumstances. As such, I won't be asking V12 to give Mr I the right to reject the car at this stage. And its for Mr I to arrange with either the warranty company or the dealership/V12 for the car to be repaired.

Previous Accident Damage

Mr I has provided a video that shows loose trim at the front of the car, and he also says there is a paint mismatch. As such, he believes the car was involved in an accident before it was supplied to him.

While there is no evidence the car was involved in an accident before it was supplied to Mr I, given the age and mileage of the car this could always be a possibility. However, the fact that a vehicle was previously involved in an accident does not automatically make it of an unsatisfactory quality, nor does it give a right to reject under the CRA.

When a vehicle has been involved in an accident, it can be repaired and put back on the road *unless* it's classed as either a Cat A or Cat B write-off. I've seen nothing to show me

that the car supplied to Mr I was classified as either a Cat A or Cat B write-off before it was supplied to him. The fact the car was supplied with a valid MOT would also indicate that the car wasn't written off and should never re-appear on the roads. It also indicates that, if it had been in a previous accident, it had been repaired to a minimum of a road legal standard.

Taking this into consideration, along with the fact that a previous owner is not obliged to declare any repaired accident damage, nor that there's any evidence to show the dealership were aware of any damage they should have but failed to declare to Mr I, I'm satisfied that there is no right to reject car in these circumstances.

As such, and while I appreciate this will come as a disappointment to Mr I, I won't be asking V12 to do anything more.

My final decision

For the reasons explained, I don't uphold Mr I's complaint about Secure Trust Bank Plc trading as V12 Vehicle Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 11 September 2024.

Andrew Burford
Ombudsman